IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 4612 OF 2004

IN

CRIMINAL APPEAL NO. 846 OF 2004

Ijazali Mohammedali Ansari .. Applicant

versus

State of Maharashtra .. Respondents

...

Mr.Majeed Memon for the applicant.

Mr.R.Y. Mirza, APP for the State.

CORAM : V.M. KANADE, J

DATED : 3rd November 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned APP appearing on behalf of the State.

2. The applicant is convicted u/s.304 II of the IPC and sentenced to suffer RI for seven years. The

prosecution case is that the deceased Firdosh was related to the wife of the accused and she was residing along with them in their house. The deceased was found murdered in the house and there were as many as 31 injuries on her person. All these injuries were either abrasions or contusions. The prosecution case is that the accused had assaulted the deceased with a stick as a result of which she died. None of the prosecution witnesses have stated that they have seen the accused assaulting the deceased. The evidence given on record which indicates that the deceased was suffering from epilepsy and used to become violent and she used to behave abnormally. It has also come on evidence that on many occasions her wrist had to be tied after such attacks. The trial Court has given a finding that though there was no direct evidence to show that the accused had assaulted the deceased, the Court has assumed that since she was residing in their house, the accused no.1 must have assaulted the deceased because she was not behaving properly.

3. In the absence of direct evidence, in my view, prima facie case is made out for grant of bail. The applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in like amount.